IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.2283/1997.

M/s.Everest Machine Aids. **VERSUS** R.F.C. & Others.

06.11.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.R.K.Mathur, for the petitioner.
Mrs.Manjeet Kaur on behalf of
Mr.R.D.Rastogi, for the respondents.

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In this writ petition, the prayer made by the petitioner was for re-schedulement of the amount found due against the petitioner.

In the writ petition, the petitioner has made an averment in para 9 that the petitioner made a request for re-schedulement of the payment of the due amount vide letter dated 19.05.1994, a copy of which has been filed as Annexure-7 but the respondents have not responded to the same. Hence, this writ petition with the above prayer.

The reply of the respondents to the averments is that the auction of the property of the petitioner including the plant and machinery was held on 07.03.1994 and that in the first instance, after the auction had

already been held, the question of re-schedulement did not arise. It has also been submitted that the prayer for re-schedulement having been made on 19.05.1994 after auction had been held on 07.03.1994, the same was not maintainable. Also as it was a condition precedent for making such a prayer for re-schedulement that the borrower was required to deposit 50% of the amount due and which was outstanding at the time when the Unit was taken possession of. It has been submitted that since the petitioner failed to comply with the necessary pre-requisite for the consideration of any application for re-schedulement, the prayer cannot be accepted.

Having given my thoughtful consider to the above, I am of the view that the writ petition cannot succeed and no relief can be granted to the petitioner in view of the reply submitted by the respondents that the petitioner failed to take necessary steps for making the prayer for re-schedulement in accordance with the procedure provided by the respondents in time and by complying with the pre-condition of deposit.

It may also be stated here that if any re-schedulement is to be made and the auction is to be set aside, the respondent No.3 Puneet Azmani who is the

auction purchaser, and who had initially been impleaded as party but the petitioner made a request before the court and vide order dated 20.09.2006 the name of the respondent No.3 was ordered to be deleted, is not before the court and as such the the auction sale cannot be set aside in absence of the purchaser.

In view of the above, in the absence of the respondent No.3, the auction proceedings cannot be set aside and the request for re-schedulement not having been made in time and without complying with the pre-condition, the said prayer too cannot be granted. The writ petition is, therefore, dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.